

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.3.433 pertaining to designated)
surveillance area)

TO: All Concerned Persons

1. On April 12, 2012, the Department of Livestock published MAR Notice No. 32-12-223 regarding the proposed amendment of the above-stated rule at page 712 of the 2012 Montana Administrative Register, issue number 7.

2. The department has amended the following rule as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

32.3.433 DESIGNATED SURVEILLANCE AREA (1) through (1)(c) remain the same.

(d) Beaverhead County – from Madison-Beaverhead County line, south of Sweetwater Road to East Bench Road near Dillon, then south of East Canal Bench Road to White Lane, then south of White lane to Blacktail Road, then south of Blacktail Road to Highway 91, then west of Highway 91 to Interstate 15 business loop, then south of Interstate 15 business loop to Interstate 15, then east of Interstate 15 to the Montana/Idaho border.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA

IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,
81-2-111, MCA

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: If a cattle herd comes up positive during the winter/spring, it will be quarantined. This puts a huge burden on seasonal grazers who rely on other ground for grazing. If the animals can't go to summer pasture, it will break the rancher. What will MDOL do to help the producer?

RESPONSE 1: Some of the recent federal rules changes give more flexibility in management of an affected herd. However, the time of year that a positive is found could impact the degree of difficulty associated with quarantining a herd.

COMMENT 2: Most of the animals in the proposed boundary area come in for seasonal grazing, often during the low risk time period. Can the rules be modified for those producers?

RESPONSE 2: Testing variances can be addressed in individual herd plans.

COMMENT 3: Montana Code Annotated 81-2-108 states that it is illegal for diseased animals to run at large in Montana and therefore, the current elk study breaks this law. Additionally, working groups need to be provided with copies of the laws that pertain to the issues that they address.

RESPONSE 3: This MCA has not been interpreted to apply to brucellosis in wildlife. It is worth noting that wildlife species have numerous endemic diseases, therefore, it is impractical or impossible to interpret this MCA literally. Furthermore, in cases where the Legislature tasks MDOL with wildlife responsibilities, it has done so prescriptively as in 81-2-120, MCA: Management of wild buffalo or wild bison for disease control. Additionally, a meeting attendee responded that last year's study was done on their ranch and they support the participation of elk in the study because more information on diseased animals is needed. Considering their resident elk herd of 3,000, only 100 were captured and 12 were positive. That is not a very significant number of known positive animals in the wild.

COMMENT 4: Can open cows from the DSA be taken to market without having a test first?

RESPONSE 4: Cattle can be tested at market, but they need official identification to leave the DSA.

COMMENT 5: Reimbursements for testing have come out of the general fund. What is the plan to secure more money for reimbursements as the DSA continually increases in size?

RESPONSE 5: The major source for funding comes from per capita fees. While the Legislature appropriated 50% per capita fees and 50% general fund for testing reimbursement, limited general fund has been used for testing reimbursements at this point. MDOL will continue to request general fund for the DSA.

COMMENT 6: The bulk of agriculture producers in the state don't care about the DSA and won't want to pay for testing in the future; additionally, most legislators in the state don't know what brucellosis is and don't care.

RESPONSE 6: Montana producers outside the DSA benefit from not having to test for brucellosis where the risk is negligible. DSA producers benefit from the DSA by being subject to one set of regulations (MDOL), availability of reimbursement for testing costs, and ability to provide input to the Board of Livestock and MDOL for needed changes to the program.

COMMENT 7: If reimbursements for testing come out of per capita fees, what other programs are not being funded?

RESPONSE 7: MDOL agrees that there are other priorities that could be funded in the absence of DSA expenditures. The Board of Livestock approved per capita fee increases to address the reduced cash balance partially due to the DSA expenditures.

COMMENT 8: A good way to get the message [of the DSA producers' sacrifice] out to other producers is to do another Economic Analysis that takes into account more of the costs to DSA producers. The Economic Analysis published a year ago did not address all costs to producers or other agency costs (i.e. APHIS funding that went to FWP for the elk study).

RESPONSE 8: It is difficult to capture every cost associated with the brucellosis program, however MDOL feels that the most significant costs were accounted for in the economic impact statement. In addition to preserving state brucellosis Class Free Status that benefits all Montana livestock producers, MDOL reimburses producers \$2/head per brucellosis test. Wyoming and Idaho do not have producer reimbursements available. Reimbursement costs are not affected by the elk study because it's being funded by APHIS.

COMMENT 9: This is a prudent and timely expansion due to the seropositive elk found during the recent increased surveillance by MFWP.

RESPONSE 9: MDOL agrees. Adjusting the DSA is based on new information and finding at-risk animals.

COMMENT 10: The DSA should be getting smaller, not larger. The MDOL should be doing whatever it takes to eliminate brucellosis from the state rather than just keep increasing the DSA. If the area is just going to be increased every year or so, it will soon encompass the entire state. The idea that the DSA will only affect a small percentage of producers is a myth. It will affect every producer in the state, a few at a time. If we continue to allow wolves to relocate the FWP's elk herds and the Governor to relocate the bison herds, it won't take very long.

RESPONSE 10: MDOL supports efforts such as the Elk Working Group to find novel solutions to brucellosis in wildlife. MDOL is also maintaining a focus on prevention of disease transmission and early detection in livestock.

COMMENT 11: The expansion of the DSA is not addressing the real issue of brucellosis in the elk herd and the potential spread to livestock. The FWP and National Park Service should be accountable for eliminating the disease in the animals they claim to control before any more burdens are placed on the livestock producers.

RESPONSE 11: There is a high priority on obtaining more complete and accurate information on the prevalence and distribution of infected elk in the state of Montana.

The following comments are outside the scope of the proposed rule:

1. Numerous questions were asked regarding the specifics of the elk study.

RESPONSE: A representative from Montana Fish, Wildlife, and Parks was present to respond to questions relating to the elk study.

2. Rather than turn the positive elk loose after they have been captured and collared, couldn't the animals be quarantined for further study? That way more information can be gathered from the offspring of positive animals as well.

RESPONSE: Information from a captive elk study would be incomplete in that the value of elk movements, behavior, and impact to the environment in the wild would be lost.

3. MDOL's response to whether the department would support financing for vaccination research was disappointing. My understanding is that the select agent listing for brucella may change soon. An argument for this change is that there are 3.5 million visitors to YNP every year and there has not been a documented case of undulant fever among those visitors.

RESPONSE: At a previous IBMP meeting, MDOL did not embrace the Citizen's Working Group recommendation in regards to vaccination research. (However, at the most recent meeting, MDOL did support these efforts as part of the IBMP.)

4. Are revaccinated (Adult Vaccinated) animals open or pregnant at the time of vaccination? Have there been many abortions in AV'd pregnant animals?

RESPONSE: Adult vaccinating nonpregnant animals is recommended. Pregnant animals can be vaccinated, however the abortion rate is highly unpredictable (aware of documented cases between 0% and 40%).

5. Does the rest of the state recognize the sacrifice of the DSA producers?

RESPONSE: Please see the response for item #6 above.

6. The next major step is to remove *Brucella abortus* from the select agent list allowing for the development of a superior vaccine for livestock.

RESPONSE: MDOL supports the select agent delisting and development of a better vaccine for livestock and wildlife.

7. We always vaccinate our calves. Do you get anything more out of an animal when it is AV'd?

RESPONSE: Once an animal reaches approximately 4.5 years of age, it no longer benefits from calfhood vaccination. Therefore, adult vaccination is recommended in higher risk areas.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay

Christian Mackay
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/s/ George H. Harris

George H. Harris
Rule Reviewer

Certified to the Secretary of State June 11, 2012.